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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY SACRAMENTO

FAIR POLITICAL PRACTICES COMMISSION, A state agency,	) Case No. 03AS05766
)
Plaintiff,	) PLAINTIFF'S MEMORANDUM OF
	) POINTS AND AUTHORITIES IN
v.	) OPPOSITION TO DEMURRER
)
CAROLINE GETTY, WILD ROSE, LLC and	) Date: January 16, 2004
DOES 1-20 inclusive,	) Time: 9:00 A.M.
	) Dept: 54
Defendants.	) Judge: Hon. Thomas Cecil
)
	) Complaint filed: October 16, 2003
)
	) NO TRIAL DATE SET
)
)

I. INTRODUCTION

Simply stated, defendant Caroline Getty wanted to make a \$500,000 political campaign contribution to support two statewide ballot measures in 2000 and another \$500,000 political campaign contribution to support one statewide ballot measure in 2002. However, defendant Getty did not want to disclose to the public that she was the person making contributions totaling \$1 million, so she laundered the money for the campaign contributions through her wholly owned independent limited liability company, defendant Wild Rose, LLC, so that it would appear the company had made the contributions. Defendant Getty, after making the \$500,000 contribution in 2000, did not file a major donor campaign statement reporting her contribution. However, her independent company, defendant Wild Rose, LLC, filed a major donor campaign statement claiming to have made the contribution.

1 Based on the above stated facts, plaintiff Fair Political Practices Commission (the
2 “Commission”) filed a complaint on October 16, 2003, alleging five violations of the Political Reform
3 Act (the “Act”)¹ by defendants Getty and Wild Rose, LLC in the three causes of action discussed below.

4 Plaintiff FPPC has not indulged in any “slight of hand” or “chicanery” in pleading these
5 violations. As Plaintiff has properly pleaded the causes of action set forth in the Complaint, Plaintiff
6 respectfully requests that the court overrule defendants’ demurrer as to each cause of action.

7 8 **II. LAW AND ARGUMENT**

9 **A. THE COMPLAINT STATES FACTS SUFFICIENT TO CONSTITUTE EACH CAUSE** 10 **OF ACTION AGAINST DEFENDANTS CAROLINE GETTY AND WILD ROSE, LLC**

11 The standard of review for a general demurrer is set forth in *C&H Foods Co. v. Hartford Ins. Co.*
12 (1984) 163 Cal. App. 3d 1055. In that case, the court stated:

13 A general demurrer admits all material facts that are properly pleaded.
14 Generally, material facts alleged in the complaint are treated as
15 true for the purpose of ruling on the demurrer. (*Gruenberg v. Aetna Ins.*
16 *Co.* (1973) 9 Cal.3d 566, 572 [108 Cal.Rptr. 480, 510 P.2d 1032].) Also
17 taken as true are facts that may be implied or inferred from those expressly
18 alleged. (*Harvey v. City of Holtville* (1969) 271 Cal.App.2d 816 [76
19 Cal.Rptr. 795]; *Miranda v. Great Southwest Fire Ins. Co.* (1975) 50
20 Cal.App.3d 492 [123 Cal.Rptr. 357], disapproved in part on other grounds
21 in *Wood v. Elling Corp.* (1977) 20 Cal.3d 353, 362, fn. 7 [142 Cal.Rptr.
22 696, 572 P.2d 755].) In short, the ruling on a demurrer determines a legal
23 issue on the basis of assumed facts, i.e., those properly alleged in the
24 complaint, regardless of whether they ultimately prove to be true. (See 3
25 Witkin, Cal. Procedure (2d ed. 1971) Pleading, § 800, p. 2413-2414.)

26 (*C&H Foods Co. v. Hartford Ins. Co.*, *supra*, 163 Cal. App. 3d 1055,
27 1062.)

28 In ruling on a demurrer, the trial court is required to construe the complaint liberally with a view
to substantial justice between the parties. (Code Civ. Proc., § 452; *Cameron v. Wernick* (1967) 251
Cal.App.2d 890.) A general demurrer will not be sustained unless the complaint, liberally construed,
fails to state a cause of action on any theory. (See *Brousseau v. Jarrett* (1977) 73 Cal.App.3d 864.)

¹ The Political Reform Act is contained in Government Code sections 81000 through 91014. All statutory
references are to the Government Code unless otherwise indicated. The regulations of the Fair Political Practices
Commission are contained in sections 18109 through 18997 of title 2 of the California Code of Regulations. All regulatory
references are to title 2, division 6 of the California Code of Regulations, unless otherwise indicated.

Moreover, the Act itself “should be liberally construed to accomplish its purposes.” (§ 81003.) In the specific context of the allegations in the instant case, the California Supreme Court stated that “the specific prohibition against money laundering (§ 84301)...[is] cast in the broadest terms, applying to ‘any person’ coming within [its] ambit.” *People v. Snyder* (2000) 22 Cal.4th 304, 308-309. As the agency charged with enforcement of the Act, plaintiff Commission’s interpretation of the Act “is entitled to great weight unless clearly erroneous or unauthorized.” [Citation omitted] *Id.* at p. 310.

Even without resorting to liberal construction, plaintiff has appropriately pleaded the three causes of action in the Complaint, which encompass five violations of the Act.

1. FIRST CAUSE OF ACTION: DEFENDANT CAROLINE GETTY MADE TWO CONTRIBUTIONS IN A NAME OTHER THAN HER LEGAL NAME, IN VIOLATION OF SECTION 84301 OF THE GOVERNMENT CODE

Pursuant to Government Code section 84301, no contribution shall be made, directly or indirectly, by any person in a name other than the name by which the person is identified for legal purposes. The first cause of action alleges two such violations were committed by defendant Caroline Getty by making political contributions in a name other than her own name.

The first violation alleged is that in January 2000 defendant Caroline Getty directed defendant Wild Rose, LLC to deliver a contribution check in the amount of \$500,000 to the Nature Conservancy Action Fund of California on her behalf to support the political campaign in favor of Propositions 12 and 13 (Comp. ¶ 16). Defendant Wild Rose, LLC, therefore, issued a \$500,000 contribution check to the Nature Conservancy Action Fund as directed, even though it did not have sufficient funds of its own to cover the check (Comp. ¶ 17). Defendant Getty then made arrangements for \$500,000 to be wire transferred from her personal trust account to defendant Wild Rose, LLC (Comp. ¶ 20) to provide the necessary funds to cover the contribution check that defendant Wild Rose, LLC delivered to the Nature Conservancy Action Fund of California on her behalf (Comp. ¶ 21). Defendant Caroline Getty was then not disclosed by either Wild Rose, LLC or the Nature Conservancy Action Fund of California in their subsequently filed campaign statements as the source of this contribution (Comp. ¶¶ 22-25). By making the \$500,000 contribution to the Nature Conservancy Action Fund in this manner, defendant Caroline

1 Getty made a contribution in a name other than her own, in violation of section 84301 of the
2 Government Code.

3 The second violation alleged is that in January 2002 defendant Caroline Getty directed defendant
4 Wild Rose, LLC to deliver a contribution check in the amount of \$500,000 to the Nature Conservancy
5 Action Fund of California on her behalf to support the political campaign in favor of Proposition 40
6 (Comp. ¶ 30). As defendant Wild Rose, LLC did not have sufficient funds of its own to cover the check
7 (Comp. ¶ 33), defendant Getty made arrangements for \$500,000 to be wire transferred from her personal
8 trust account to defendant Wild Rose, LLC to provide the necessary funds to cover the check (Comp. ¶
9 32). Defendant Wild Rose, LLC then delivered a \$500,000 contribution check on behalf of defendant
10 Getty to the Nature Conservancy Action Fund of California (Comp. ¶ 34). Defendant Caroline Getty
11 was then not disclosed by the Nature Conservancy Action Fund of California in its subsequently filed
12 campaign statement as the source of this contribution (Comp. ¶ 37). By making the \$500,000
13 contribution to the Nature Conservancy Action Fund in this manner, defendant Caroline Getty made a
14 contribution in a name other than her own, in violation of section 84301 of the Government Code.

15 As to each \$500,000 contribution check that defendant Wild Rose LLC delivered to the Nature
16 Conservancy Action Fund of California on behalf of defendant Getty, defendant Wild Rose, LLC did
17 not have sufficient funds in its company checking account to cover the check (Comp. ¶¶ 17, 33) until
18 after it received a wire transfer of funds from defendant Getty (Comp. ¶¶ 21, 32).

19 As discussed below, in their supporting points and authorities, defendants have rewritten the
20 facts alleged in the complaint. Specifically, defendants incorrectly claim that the complaint alleges that
21 plaintiffs are attempting to attribute a contribution from a single member LLC to its single member.
22 Further, defendants assert that defendant Getty “simply chose to make a contribution from one of the
23 options available to her.” (P&A in support of demurrer p. 7.)

24 Even overlooking defendants’ effort to rewrite the complaint, the mere fact that defendant
25 Getty is the only member of defendant Wild Rose, LLC, or can otherwise control its actions, does not
26 make it a lawful “option” for defendant Getty to use defendant Wild Rose, as a separate entity, to
27 shelter her from being identified as the actual contributor. Under section 84301, defendant Getty, as
28 the source of the funds to make the contribution, had to make the contribution in her own name, and

1 not that of her controlled LLC. This is no different from any other instance of campaign money
2 laundering in which a contributor makes a contribution through some separate entity or person that the
3 contributor controls, in order to conceal his or her identity as the actual contributor. (See *Paul for*
4 *Council v. Hanyecz* (2001) 85 Cal.App.4th 1356, 1361, disapproved on another point in *Equilon*
5 *Enterprises, LLC v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, fn. 5; where, in the context of an anti-
6 SLAPP motion, defendants' own moving papers showed "that they in fact did violate the Political
7 Reform Act when they laundered campaign contributions to persons running for local and state
8 offices...by having family members submit contributions to the campaigns of various candidates, and
9 then reimbursing those family members for the amounts contributed.") Defendant Getty directing her
10 controlled LLC to make contributions and then providing the funding for those contributions such that
11 her identity as the contributor is hidden, clearly comes within section 84301's "broad prohibition"
12 against making contributions "in a name other than the name by which such person is identified for
13 legal purposes," and is the unlawful laundering of a campaign contribution. (*People v. Snyder, supra*,
14 22 Cal.App.4th 304, 307.)

15 Therefore, the first cause of action states facts sufficient to allege a cause of action against
16 defendant Caroline Getty for committing two violations of section 84301 of the Government Code.

17
18 **2. SECOND CAUSE OF ACTION: DEFENDANT WILD ROSE, LLC MADE TWO**
19 **CONTRIBUTIONS ON BEHALF OF DEFENDANT CAROLINE GETTY**
20 **WITHOUT DISCLOSING THAT IT WAS ACTING AS AN INTERMEDIARY**
FOR THE CONTRIBUTIONS IN VIOLATION OF SECTION 84302 OF THE
GOVERNMENT CODE

21 Pursuant to Government Code section 84302, no person shall make a contribution on behalf of
22 another, or while acting as the intermediary or agent of another, without disclosing to the recipient of the
23 contribution both his or her own full name and street address, occupation, and the name of his or her
24 employer, if any, or his or her principal place of business if self-employed, and the full name, street
25 address, occupation, and the name of employer, if any, or principal place of business if self-employed,
26 of the other person. The second cause of action alleges two such violations against defendant Wild
27 Rose, LLC for making political contributions on behalf of another person without disclosing the true
28 source of the contributions.

1 The first violation alleged is that in January 2000 defendant Caroline Getty directed defendant
2 Wild Rose, LLC, to deliver a contribution check in the amount of \$500,000 to the Nature Conservancy
3 Action Fund of California on her behalf to support the political campaign in favor of Propositions 12
4 and 13 (Comp. ¶ 44). Defendant Wild Rose, LLC therefore issued a \$500,000 contribution check to the
5 Nature Conservancy Action Fund as directed (Comp. ¶ 46), even though it did not have sufficient funds
6 of its own to cover the check (Comp. ¶ 51). Defendant Getty then made arrangements for \$500,000 to
7 be wire transferred from her personal trust account to defendant Wild Rose, LLC (Comp. ¶ 49) to
8 provide the necessary funds to cover the contribution check that defendant Wild Rose, LLC delivered to
9 the Nature Conservancy Action Fund of California on her behalf (Comp. ¶ 50). At the time that
10 defendant Wild Rose, LLC delivered this contribution check on behalf of defendant Getty, defendant
11 Wild Rose, LLC issued a transmittal letter to the Nature Conservancy Action Fund of California that
12 earmarked the contribution for the Propositions 12 and 13 campaign (Comp. ¶ 47), but did not disclose
13 that Wild Rose, LLC was merely serving as an intermediary for this contribution, whose true source was
14 defendant Caroline Getty (Comp. ¶ 48). By delivering the \$500,000 contribution check to the Nature
15 Conservancy Action Fund of California without disclosing that defendant Caroline Getty was the source,
16 defendant Wild Rose, LLC violated section 84302 of the Government Code.

17 The second violation alleged is that in January 2002 defendant Caroline Getty directed defendant
18 Wild Rose, LLC, to deliver a contribution check in the amount of \$500,000 to the Nature Conservancy
19 Action Fund of California on her behalf to support the political campaign in favor of Proposition 40
20 (Comp. ¶ 54). As defendant Wild Rose, LLC did not have sufficient funds of its own to cover the check
21 (Comp. ¶ 58), it therefore awaited receipt of a wire transfer of \$500,000 from defendant Getty's personal
22 trust account in order to be able to cover the check (Comp. ¶¶ 56-57). Upon receiving the wire transfer,
23 defendant Wild Rose, LLC issued and delivered a contribution check in the amount of \$500,000 to the
24 Nature Conservancy Action Fund of California (Comp. ¶ 59). At the time that it delivered this
25 contribution check on behalf of defendant Getty, defendant Wild Rose, LLC issued a transmittal letter to
26 the Nature Conservancy Action Fund of California that earmarked the contribution for the Propositions
27 40 campaign (Comp. ¶ 60), but did not disclose that Wild Rose, LLC was merely serving as an
28 intermediary for this contribution, whose true source was defendant Caroline Getty (Comp. ¶ 61). By

1 delivering the \$500,000 contribution check to the Nature Conservancy Action Fund of California
2 without disclosing that defendant Caroline Getty was the source, defendant Wild Rose, LLC violated
3 section 84302 of the Government Code.

4 Here again, defendants claim that it was defendant Wild Rose, LLC, independent of defendant
5 Getty and her personal funds, that made the two \$500,000 political contributions in 2000 and 2002.
6 While it may be a potential factual defense to the second cause of action that somehow defendant Wild
7 Rose, LLC acted on its own, independently of defendant Getty, it is not a proper argument for a
8 demurrer. As pleaded, defendant Wild Rose, LLC was used as an intermediary for defendant Getty's
9 contributions and did not disclose defendant Getty as the actual contributor. On a demurrer, this court
10 must treat the facts alleged in the complaint as true (*C & H Foods Co. v. Hartford, supra*, 163
11 Cal.App.3d 1055), and the facts alleged in the complaint state a cause of action against Wild Rose, LLC
12 for committing two violations of section 84302 of the Government Code.

13 Defendants argue that defendant Wild Rose, LLC does not qualify as an intermediary under the
14 definition set forth in title 2, California Code of Regulations section 18432.5. However, subdivision
15 (a)(1) of regulation 18432.5, includes within the definition of "intermediary," any person that "[t]he
16 recipient of the contribution would consider...to be the contributor without the disclosure of the identity
17 of the true source of the contribution." Defendants acknowledge in their arguments that the Nature
18 Conservancy Action Fund of California considered defendant Wild Rose, LLC to be the contributor, and
19 in fact, "timely reported the receipt of each \$500,000 donation by defendant Wild Rose." (P&A in
20 support of demurrer p. 8). The fact that the Nature Conservancy Action Fund of California did not
21 disclose in their campaign statements that defendant Caroline Getty was the true source of the
22 contributions further establishes that they considered defendant Wild Rose, LLC to be the contributor.
23 The complaint alleged, and it is not disputed by defendants, that funds for the two \$500,000
24 contributions came from defendant Getty's personal trust account, passed through the Wild Rose, LLC
25 company account, and were delivered to the Nature Conservancy Action Fund of California without the
26 required disclosure that defendant Getty was the true source of the funds, in violation of Government
27 Code section 84302.

28 //

1 Therefore, the second cause of action states facts sufficient to allege a cause of action against
2 defendant Wild Rose, LLC for committing two violations of section 84301 of the Government Code.

3 **3. THIRD CAUSE OF ACTION: DEFENDANT CAROLINE GETTY FAILED**
4 **TO FILE A MAJOR DONOR CAMPAIGN STATEMENT IN VIOLATION OF**
5 **SECTION 84200 OF THE GOVERNMENT CODE**

6 Section 82013, subdivision (c) includes within the definition of “committee” any person or
7 combination of persons who directly or indirectly makes contributions totaling Ten Thousand Dollars
8 (\$10,000) or more in a calendar year to, or at the behest of, candidates or committees. This type of
9 committee is commonly referred to as a “major donor” committee. Pursuant to Government Code
10 section 84200, subdivision (b), a committee that qualifies under Government Code section 82013,
11 subdivision (c), as a “major donor” committee, shall file semi-annual campaign statements each year, no
12 later than July 31 for the reporting period ending June 30, and no later than January 31 for the reporting
13 period ending December 31, if the committee has made any contributions during the reporting period.
14 Under Government Code section 84211, any semi-annual campaign statement required to be filed by a
15 committee must contain specified information about the contributions made by the committee during the
16 reporting period covered by the statement. The third cause of action alleges one violation of section
17 84200 against defendant Caroline Getty for failing to file a major donor campaign statement in 2000.

18 Defendants claim that the third cause of action fails to state facts sufficient to constitute a cause
19 of action against defendant Caroline Getty. However, defendants have only argued that if the demurrer
20 to the first cause of action is sustained, then there would be no reporting obligation requiring defendant
21 Getty to file the major donor campaign statement as alleged in the third cause of action. They argue no
22 separate basis from what they argue regarding the first cause of action, for the demurrer to be sustained
23 as to the third cause of action. As such, if the court denies the demurrer to the first cause of action, and
24 treats all material facts alleged in the third cause of action as true, as required when considering a
25 demurrer, then the demurrer to the third cause of action must also be denied.

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1 **B. A DEMURRER CAN BE USED ONLY TO CHALLENGE DEFECTS THAT APPEAR**
2 **ON THE FACE OF THE COMPLAINT**

3 A demurrer tests the pleadings alone and not the evidence or other
4 extrinsic matters. Therefore, it lies only where the defects appear on the
5 face of the pleading or are judicially noticed [citation]. The only issue
6 involved in a demurrer hearing is whether the complaint, as it stands,
7 **unconnected with extraneous matters**, states a cause of action
8 [citation].

9 (*SKF Farms v. Superior Court* (1984) 153 Cal.App.3d 902, 905, emphasis added.)

10 In the instant case, the linchpin of defendants' argument is that the complaint attributes a
11 contribution made by a single member LLC to its single member (P&A supporting demurrer pp. 6, 7).
12 While defendants' assertion may suit its argumentative ends, nowhere in the complaint is it stated or
13 acknowledged that defendant Wild Rose, LLC independently made contributions that were, after the
14 fact, "attributed" to its single owner defendant Caroline Getty. Rather, the complaint unambiguously
15 alleges that defendant Caroline Getty made political contributions by laundering the money for the
16 contributions through her separate wholly owned company, defendant Wild Rose, LLC, while having
17 defendant Wild Rose, LLC deliver her contributions to the Nature Conservancy Action Fund of
18 California, without disclosing that she was the true source of the money. Defendants' rewriting of the
19 allegations in the complaint in its memorandum of points and authorities, as being based upon
20 "attribution" of defendant Wild Rose's independent contributions to defendant Getty, is nothing more
21 than an extraneous matter which cannot be considered by the court. (*SKF Farms v. Superior Court*,
22 *supra*, 153 Cal.App.3d 902, 905.)

23 Further, defendants assert that defendant Getty "simply chose to make a contribution from one of
24 the options available to her." (P&A in support of demurrer p. 7.) Again, this is an ostensible factual
25 assertion contained only in defendants' points and authorities and not in the complaint. As such, it is
26 another extraneous matter that cannot not be considered by this court (*SKF Farms v. Superior Court*,
27 *supra*, 153 Cal.App.3d 902, 905.)

28 In the end, this leaves nothing left for the Court to consider of defendants' argument in favor of
the demurrer except defendants' broad contention that the complaint fails to state a cause of action.

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1 However, as discussed at length in the previous section of this memorandum, the complaint clearly
2 states three causes of action involving five violations of the Political Reform Act.
3

4 **C. DEFENDANTS CANNOT RAISE IN A DEMURRER MATTERS THAT MUST**
5 **OTHERWISE BE PLEADED IN THEIR ANSWER**

6 Defendants make a number of additional claims and assertions that appear to advance a
7 defense of disparate treatment in the prosecution of this case by plaintiff. (Defendants' MPA,
8 pp. 7:21-27.) To support this claimed defense, they have asked the court to take judicial notice of
9 extrinsic matters that purport to support such a defense, but do not relate in any way to the sufficiency
10 of the allegations set forth in the complaint. While a defense of disparate treatment might be
11 appropriately raised at trial, it is not an appropriate ground for a demurrer which applies only to the
12 sufficiency of the complaint in stating a cause of action. (*Frances T. v. Village Green Owners Ass'n.*
13 (1986) 42 Cal.3d 490, 519.) As such, the claims and assertions raised by defendants supporting the
14 disparate treatment defense and the extrinsic matters proffered in support thereof should not be
15 considered by the court in the context of the instant motion.
16

17 **III. CONCLUSION**

18 For all of the reasons set forth above, plaintiff, Fair Political Practices Commission requests that
19 the court overrule defendants' demurrer as to all three causes of action.
20
21

22 Dated: _____

23 Steven Benito Russo
24 Jeffery A. Sly
25 Attorneys for Plaintiff
26 Fair Political Practices Commission
27
28